

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GLEN A. HORSPPOOL)

For Appellant: Glen A. Horspool, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Ferol T. Boucher
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Glen A. Horspool for refund of personal income tax in the amount of \$112 for the year 1967.

The questions presented by this appeal are (1) whether appellant Glen A. Horspool was entitled to claim head of household status, and (2) whether appellant was eligible to use the income averaging provisions contained in sections 18241 through 18246 of the Revenue and Taxation Code.

Appellant, a teacher at a junior college, and his former wife are the parents of eight children. They were divorced by an interlocutory decree entered and filed on December 11, 1967. This decree incorporated an earlier

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support agreement. A final decree of divorce was entered on March 5, 1968. On his original 1967 federal and California income tax returns, appellant claimed head of household status. On or about April 5, 1969, appellant filed amended 1967 federal and state income tax returns which were identical to the originals except that he asserted eligibility to use the income averaging provisions and, as a consequence, claimed a refund. In his computation for income averaging, appellant used taxable income figures which excluded personal and dependent exemptions. When these are added to his taxable income, the income amounts to \$3,821, \$5,902, \$8,858, and \$9,626 for the base years 1963, 1964, 1965, and 1966, respectively. During the computation year 1967, appellant had adjusted taxable income in the amount of \$10,354.

On May 10, 1971, concluding that appellant's "averageable income" within the meaning of section 18241 of the Revenue and Taxation Code was less than \$3,000, respondent denied appellant's claim and appellant thereafter filed this appeal. The federal authorities refused appellant head of household status for the year 1967 and, also, disallowed the claim for refund which was dependent upon his eligibility to income average.

Without a final decree of divorce or a decree of separate maintenance, a married taxpayer cannot qualify as a head of household, even though separated from his spouse. (Rev. & Tax. Code, §§ 17042 and 17043; Appeal of J. Albert and Augusta F. Hutchinson, Cal. St. Bd. of Equal., Aug. 5, 1968; Appeal of Mohammed M. Siddiaui, Cal. St. Bd. of Equal., Sept. 14, 1972.) Since the final divorce decree was not obtained until March 5, 1968, we must conclude that appellant did not qualify as a head of household during 1967.

Appellant next contends that it was in error for respondent to include, for income averaging purposes, appellant's personal and dependent exemptions for the years prior to 1967. Inclusion of these amounts results in appellant's disqualification as his averageable income is below the \$3,000 minimum. (Rev. & Tax. Code, § 18241.) This result is mandatory, however, under the law. (Rev. & Tax. Code, §§ 18242, subd. (c)(2)(B) and 17054.)

For the reasons expressed herein, we sustain respondent.

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O R D E R .

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19060 of the Revenue and Taxation -Code, that the action of the Franchise Tax Board in denying the claim of Glen A. Horspool for refund of personal income tax in the amount of \$112 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of March, 1973, by the State Board of Equalization.

Gallagher, Eugene K., Chairman
John W. Lynch, Member
Gregory, Robert, Member
Paul, John, Member
_____, Member

ATTEST: *W.W. Dunlop*, Secretary